

¹ Mr. Lufsey, who owns the subject site, is also the president of two corporations which operate from the subject site, Gene's Johns and Rentals, Inc. and Blue Ribbon Restroom Trailers, Inc.; however, the sole petitioner is Mr. Lufsey, individually. Exhibit 1(a).

I. STATEMENT OF THE CASE

Petition No. S-2749, filed on April 10, 2009, and subsequently amended, seeks a special exception, pursuant to §59-G-2.54.3 of the Zoning Ordinance, to allow Petitioner to establish an Outdoor Storage Facility for 850 individual portable toilets and no more than 12 mobile restroom trailers, on 8.2 acres of land at 23320 and 23330 Ridge Road, Germantown, Maryland, in the Rural Cluster (RC) Zone. Petitioner Vincent E. Lufsey owns the property, which has operated as a family business on this site since March 9, 1995, pursuant to registered Home Occupation License No. 330. Mr. Lufsey is the president of two corporations which operate on the site. They are Gene's Johns and Rentals, Inc., which rents standard, individual porta-toilets and Blue Ribbon Restroom Trailers, Inc., which rents mobile restroom trailers. Exhibit 3(a).

Petitioner also requests a waiver of the 20-foot driveway width requirement for both existing 10-foot-wide driveways.

After a number of amendments to the petition and postponements at the Petitioner's request, a Notice of Hearing was issued on October 7, 2009, scheduling the hearing for February 12, 2010 (Exhibit 26). Technical Staff of the Maryland-National Capital Park and Planning Commission recommended approval of the special exception, with conditions, in a memorandum dated January 22, 2010.² Exhibit 31. On February 4, 2010, the Montgomery County Planning Board voted 3-0 to recommend approval, based on the Technical Staff's report. Exhibit 36. Both the Planning Board and Technical Staff recommended approval of the waiver regarding the driveways, with the condition that the driveways be widened to no less than twelve feet. Petitioner's counsel forwarded Staff a letter from Kathie Hulley of the Clarksburg Citizens Association, indicating that its planning committee had no objections. The letter concludes with a statement supporting approval of the petition. Exhibit 23(a).

A motion to again amend the petition was filed on February 3, 2010, seeking permission to

² The Technical Staff Report is frequently quoted and paraphrased herein.

increase the number of units permitted to be stored up to 850 portable toilets and 12 mobile restroom trailers.³ Exhibit 34. Notice of this proposed amendment was issued on February 4, 2010 (Exhibit 35). Since the motion to amend was filed less than 10 days before the hearing, the notice permitted comments to be filed until February 15, 2010 (*i.e.*, after the hearing date), but none was received.

A public hearing was convened as scheduled on February 12, 2010. There was no opposition, and five witnesses were called by Petitioner. Martin Klauber, Esquire, the People's Counsel, participated and testified as a witness. He indicated his support for the petition. Tr. 18 and 88. At the hearing, Petitioner noted that the only new building proposed for the site, a trailer garage, would be larger than originally planned. The record was held open until March 22, 2010, to allow revised submissions, analysis by Technical Staff and public comment.

Petitioner submitted revised plans and related documents on February 25, 2010 (Ex. 44), and Technical Staff approved all the changes in an e-mail to the Hearing Examiner dated March 3, 2010. Exhibit 45. There were no public comments received, but on March 22, 2010, the date the record initially closed, Petitioner submitted a letter (Ex. 46) requesting a change in the hours of operation. On April 1, 2010, Petitioner submitted a revised Statement of Operations (Ex. 50(a)) and a revised statement of proposed conditions (Ex. 50(b)), per instructions from the Hearing Examiner, to show the new hours of operation (Ex. 47). On April 2, 2010, a notice was issued regarding the motion to amend, and the record was reopened to receive the new filings and any comments thereon. Ex. 51.

Technical Staff approved the change in hours (Ex. 49), as did the People's Counsel (Ex. 48), and no public comment was received within the 10 day period specified in the notice. An elevation and a plan view of the proposed trailer garage were also filed on April 9, 2010, while the record was still open. No additional notice was required because these plans merely reflected changes made at the public hearing. By the terms of the April 2 notice, the record closed again on April 12, 2010.

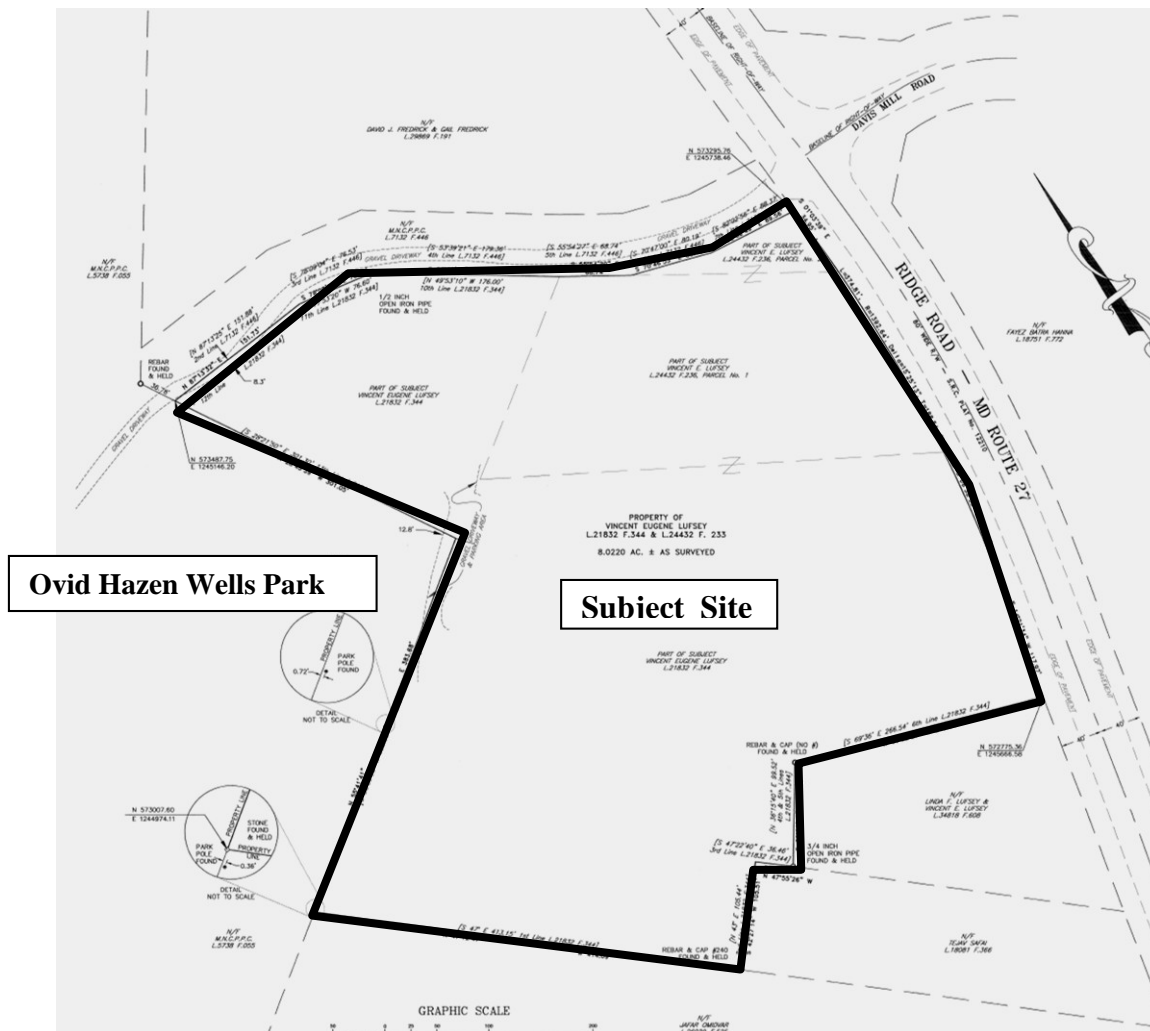
³ The initial petition sought approval of 500 portable toilets and 10 mobile restroom trailers. Exhibit 3(a), p. 4.

Based on the record in this case, as discussed below, the Hearing Examiner finds that Petitioner has met the standards for the grant of a special exception under Zoning Ordinance §59-G-2.54.3, and the waiver of the required driveway width under Code §59-E-4.5.

II. FACTUAL BACKGROUND AND ANALYSIS

A. The Subject Property and the General Neighborhood

The subject site is located on the west side of Ridge Road, in Germantown, just southwest of its intersection with Davis Mill Road. The property is described as Parcels P95 and P71, and its Tax Account Numbers are 00017454 and 00024118. The site is bounded to the west by the and on the north by a service drive to the Park. Its boundaries are shown on the following “Boundary Exhibit” (Exhibit 4(b)):



Technical Staff describes the topography of the site in its report (Exhibit 31, p. 6):

The topography of the property is for the most part relatively shallow, with the high point located at the western edge of the property where the current barn structure is located. The site gently falls off to the north, east and south. However, to the west and northwest of the high point the topography falls off approximately 50 feet to the stream channel. There are steep slopes on the northwest portion of the site and immediately adjacent to the western property line on the Ovid Hazen Wells Park.

According to Technical Staff, there is a “second order stream” that crosses the subject property along the far northwest corner, and the associated stream valley buffer occupies a small segment of that corner of the property. Steep slopes are found in the northwest corner and along a portion of the northern property line. There are no forests, wetlands or streams on site, and the property is not located within a Special Protection Area.

The Land Planning Report prepared by Petitioner’s land planner, Phillip Perrine, describes the existing site as follows (Exhibit 44(b), pp. 1-2):

Parcel P 71 is improved with a one-story, single-family detached dwelling, patio and pool, a 1-1/2 story metal building (“Shop”), and an asphalt parking area and driveway with access to Ridge Road. Parcel P 95 is improved with a two-story, single-family detached dwelling, a one-story block and frame building (“Office”), a one-story metal building (“Garage”), a one-story metal shed (“Storage Shed”), a one-story metal barn (“Barn”), an asphalt driveway with access to Ridge Road, and extensive asphalt and gravel parking and storage areas. The two detached dwellings are in active use as residences on the Property. The detached dwelling on Parcel P 71 is the residence of Mr. Lufsey’s father, Eugene Lufsey. The detached dwelling on Parcel P 95 is the residence of a family friend.

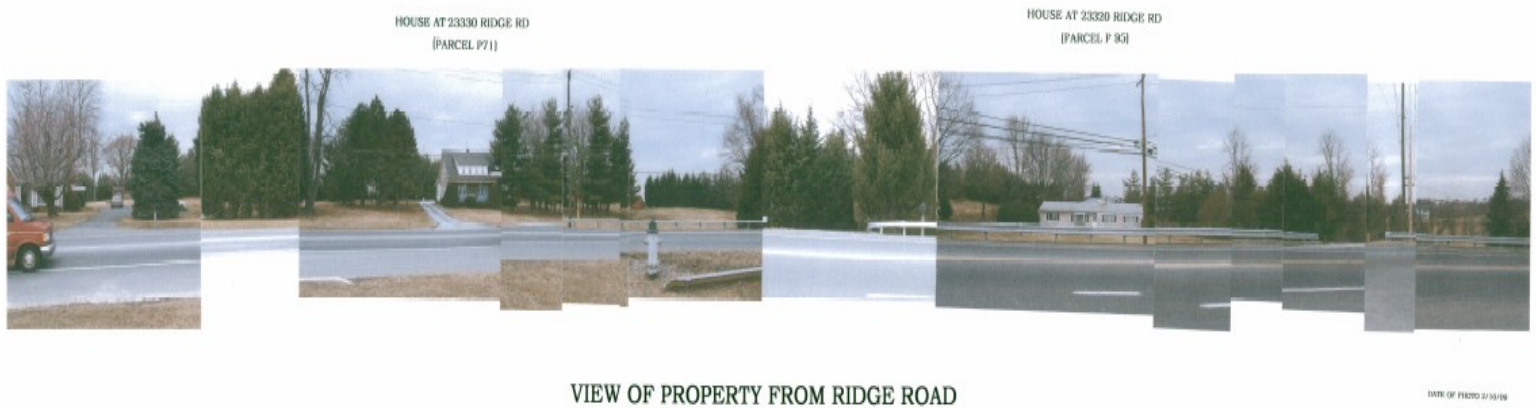
The Property has two points of access onto Ridge Road as shown on the site plan. The southern driveway is used primarily for the special exception operations, and is also used for access to the detached dwelling on Parcel P 95. The northern driveway is used primarily for access to the detached dwelling on Parcel P 71. However, both driveways, at present and into the future, will be used for special exception operations.⁴

These features can be seen on an aerial photograph from the Technical Staff report (Exhibit 31, p. 4), which is reproduced on the following page:

⁴ Pursuant to a condition recommended by Technical Staff, the driveways, which are now 10 feet wide, will both be widened to 12 feet. Petitioner’s revised Statement of Operations, Exhibit 50(b), p. 5.



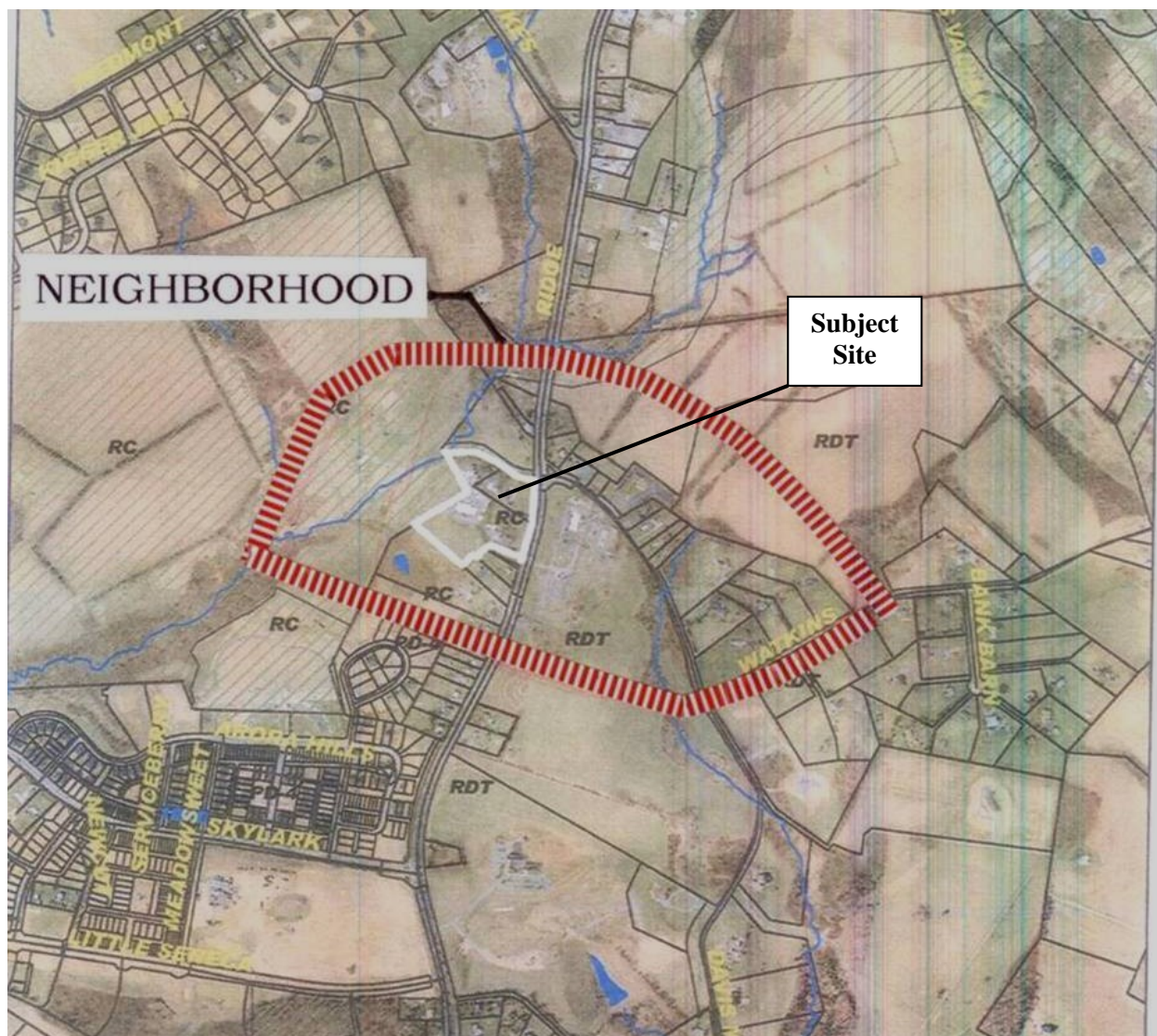
The subject site is also depicted in a panoramic photographic view from Ridge Road (Exhibit 6(f)):



VIEW OF PROPERTY FROM RIDGE ROAD

DATE OF PHOTO 2/20/18

The general neighborhood, as defined by Petitioner's land planner, Phil Perrine, was accepted by Technical Staff. Exhibit 31, p. 5. At the hearing, Mr. Perrine set forth the defined boundaries of the neighborhood (Tr. 22-23). It would extend on the west to the Ovid Hazen Wells Park, including the frontage of the park. To the north, the boundary would run through the area of Cedar Grove just to the north of the Davis Mill Road intersection. On the east, the neighborhood would include the residences along Ridge Road, the two churches and residences along Davis Mill and a retail landscape horticultural use on the east side of Ridge Road. To the south, it would include the single-family homes along Ridge Road, both on the west and the east side. The defined neighborhood is depicted on a map provided by Petitioner at the hearing (Exhibit 39):



The Hearing Examiner accepts this definition of the general neighborhood, as it covers the area containing those who are most directly affected by the use. Mr. Perrine described the neighborhood in his Land Use report (Exhibit 44(b), p. 2), which description was quoted, with approval, by Technical Staff:

The Property is located within the Clarksburg Master Plan Area, Approved and Adopted in April 1994 (the "Master Plan"), and is located along the west side of Ridge Road (MD 27), an arterial highway, immediately south of a small commercial area. This commercial area includes a filling station and convenience store, located at Cedar Grove, along Ridge Road between Davis Mill Road and Hawkes Road. Single-family detached dwellings, with frontage on Ridge Road, are located to the south of the Property. To the west the Property abuts the Ovid Hazen Wells Park. An access service drive from Ridge Road to the Park borders the Property on the north, with the commercial uses further north on the western side of Ridge Road. A retail nursery and farm supply business (special exception S-2390/2391) is located to the east across Ridge Road from the Property immediately south of Davis Mill Road, with single-family homes further to the north also on the east side of Ridge Road. The Christ Lutheran Church and Upper Seneca Baptist Church are both located on the north side of Davis Mill Road east of Ridge Road. The surrounding area, thus, is a mix of agricultural, residential, commercial/business, and institutional uses.

As noted by Mr. Perrine, the general neighborhood is "a mixed-use area." It is "a mix of agricultural, essentially, institutional, the park and the churches, and commercial uses, the retail landscape operation and the commercial use at Cedar Grove, as well as residential." Tr. 22-23.

B. The Proposed Use

The subject application seeks a special exception pursuant to Section 59-G-2.54.3 of the Zoning Ordinance to establish an Outdoor Storage Facility for 850 individual portable toilets and no more than 12 mobile restroom trailers. The RC Zone permits outdoor storage by special exception under Zoning Ordinance §59-C-9.3.

Petitioner also requests a waiver of the 20-foot driveway width requirement contained in Zoning Ordinance §59-E-2.41(b), for both driveways. Technical Staff and the Planning Board recommended approval of the special exception and waiver request, conditioned upon additional landscaping being provided and the widening of both driveways to 12 feet. Exhibits 31 and 36.

The additional landscaping was included in a revised landscape plan (Exhibits 44(f) – (h)) subsequently approved by Technical Staff (Exhibit 45), and Petitioner has agreed to widening of the driveways to 12 feet. A condition so requiring is recommended in Part V of this report. These matters will be discussed in further detail below.

The use proposed by Petitioner entails the following, as described in the revised Statement of Operations (Exhibit 50(a)):⁵

Buildings, Parking and Storage Areas:

In addition to the two existing, detached dwellings, there are existing buildings which are utilized for various operational functions. As indicated below, this special exception proposes the use of existing buildings and the addition of one new building, with locations noted on the Site Plan.

<u>Building</u>	<u>Use</u>
Existing Shop:	Work area to fix and repair porta-toilets and mobile restroom trailers.
Existing Office:	Administrative business operations.
Existing Garage:	Vehicle storage.
Existing Shed:	Storage of lawn mower, plastic tanks for toilets.
Existing Barn:	Storage of pump trucks, skid loader, and supplies.
Existing Parking:	Parking consisting of 52 spaces (12 of which are indoors)
Storage Areas:	Outdoor storage of trailers, trucks, porta-toilets, restroom trailers.
Future Trailer Garage:	A proposed building (approximately 54' x 100') would be used for storage of the mobile restroom trailers

Equipment:

Up to 850 standard, individual porta-toilets
 Up to 12 mobile restroom trailers
 1 skid loader
 6 flatbed trailers

⁵ Much of it is repeated verbatim, though reorganized.

Vehicles:

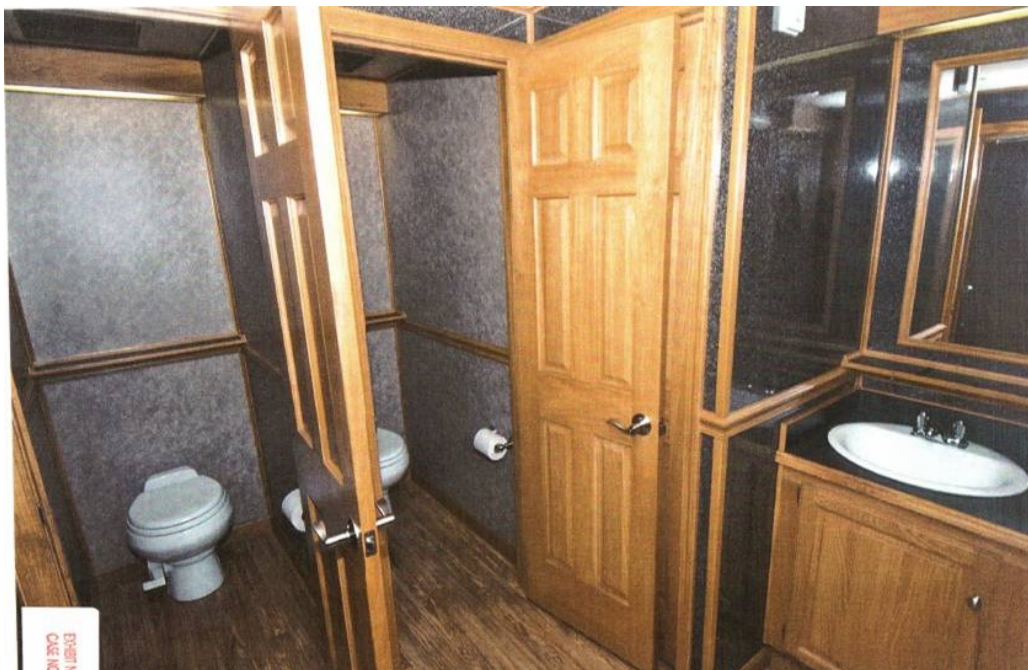
2 pickup trucks (up to 5½ ton)
12 pump trucks (5½ ton cabin with tank mounted on it)

Operational Characteristics:

Two corporations rent portable toilet facilities; one, Gene's Johns and Rentals, Inc., rents standard, individual porta-toilets, and the other, Blue Ribbon Restroom Trailers, Inc., rents mobile restroom trailers. Unlike a standard, individual porta-toilet, a mobile restroom trailer includes a toilet, sink, and the typical features of a restroom. Vincent Lufsey is president and chief executive officer of both corporations. He operates both corporations, and the Statement of Operations covers the activities of both corporations, which is a combined operation renting the two types of portable toilet facilities. It is a family owned and operated business.

Customers typically include construction sites, community festivals, running events, weddings, and similar activities. Porta-toilets are delivered from the Subject Property to the location of use on a flatbed trailer towed by a pick-up truck driven by a delivery driver. Mobile restroom trailers are similarly delivered by pick-up truck to the location of use. The porta-toilets and restroom trailers are serviced at those locations by an employee, a route driver, utilizing a pump truck. The route driver pumps the sewage out of the porta-toilet or restroom trailer into a tank on the pump truck and replenishes supplies. After servicing a porta-toilet or restroom trailer the route driver proceeds to a WSSC facility to discharge the sewage and then returns to the subject property to store the pump truck. When a customer no longer needs the porta-toilet or restroom trailer a delivery driver picks it up, after it has been serviced, and it is returned, empty, to the subject property for storage and any necessary repairs until the next assignment.

The porta-toilets and restroom trailers are stored outdoors at various locations on the subject property, along with trucks, trailers, and other equipment. They are depicted in the following photographs (Exhibits 14(a) – (c)):



No storage or treatment of effluent occurs on-site, and no porta-toilets or restroom trailers are emptied on the subject property. Rather, they are brought to the subject property after being emptied by a pump truck with the sewage, as noted, disposed at an off-site WSSC facility.

Employees:

There will be a maximum of 19 employees, plus the owner. Three office personnel remain on-site. Two of the employees are part-time and one is full-time. There are three shop employees that remain on-site to make repairs to any of the portable toilet facilities that are damaged and to maintain vehicles. Three employees are delivery drivers who deliver the portable toilet facilities to the various locations where they are used, and ten employees are route drivers who travel to the toilet facilities to service them. Mr. Lufsey maintains an office on the subject property, and approximately fifty percent (50%) of the day he is present on the property while the rest of the time he is off-site on business related matters.

Days and times of Operation:

The hours of operation are as follows, distinguished by type of employee.

Office employees:	8 a.m. – 4 p.m., Monday through Friday.
Shop employees:	7 a.m. – 3:30 p.m., Monday through Friday.
Delivery Drivers:	In: 4 a.m.-6 a.m. Out: 7 a.m. Return: 4 p.m. (infrequently by 6 p.m.), Monday through Friday. On rare occasion an emergency delivery is requested and made.
Route Drivers:	In: 4 a.m.-6 a.m. Out: 7 a.m. Return: 4 p.m. (infrequently by 6 p.m.), Monday through Friday.

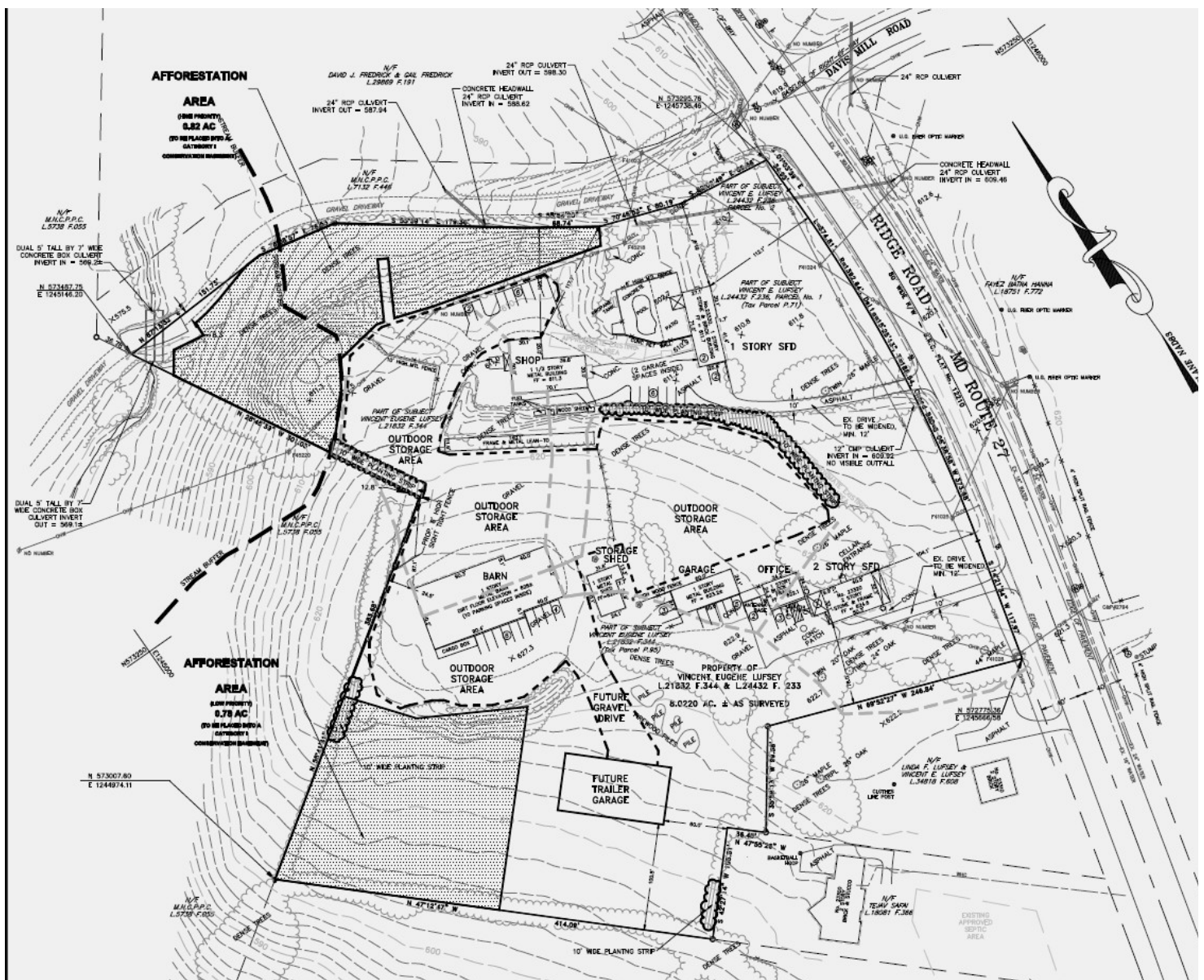
From April through October, the above hours of operations will apply on weekends, except that the return time for portable toilets is extended till 9:00 p.m. on Sundays. Petitioner reports that some organizations and local governments either do not want, or are not permitted, to leave portable toilets at locations from Friday to Monday. Consequently, rented portable toilets will be delivered on Saturday and may be returned on Sunday no later than 9:00 p.m.

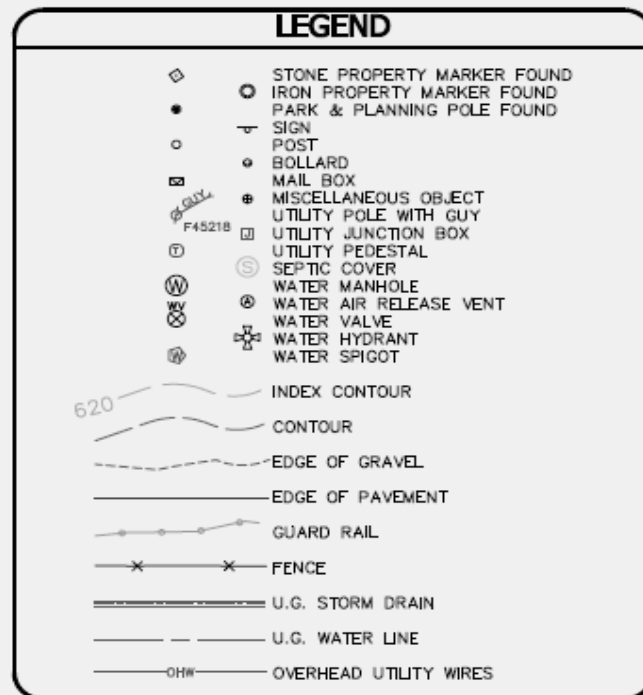
Access:

The Subject Property has two points of access onto Ridge Road, which are shown on the revised Site Plan. The southern driveway is used primarily for the special exception operations, and is also used for access to the detached dwelling on Parcel P95. The northern driveway is used primarily for access to the detached dwelling on Parcel P71. However, both driveways will be used for special exception operations and will be expanded to 12 feet in width.

The Site Plan:

Petitioner's revised Site Plan (Exhibit 44(d)), is reproduced below and on the following page:





NOTES

THIS SURVEY WAS PERFORMED WITHOUT BENEFIT OF A TITLE REPORT.

THE HORIZONTAL DATUM FOR THIS SURVEY IS MARYLAND STATE PLANE (NAD 83) COORDINATE SYSTEM AND VERTICAL DATUM IS NAVD88. TWO GLOBAL POSITION OBSERVATIONS WERE MADE AND WERE PROCESSED BY THE ONLINE POSITIONING USER SERVICE (OPUS) PROVIDED BY THE NATIONAL GEODETIC SURVEY (NGS).

THE TOPOGRAPHY SHOWN HEREON IS FROM AERIAL PHOTOGRAMMETRY DATED JUNE 3, 2008 FROM WNGS AERIAL MAPPING CO., INC. PROJECT #28060. PANEL POINT DATUM WAS PROVIDED BY MADDOX ENGINEERS & SURVEYORS, INC. SOME OF THE OBSCURED AREAS ARE BASED ON FIELD RUN TOPOGRAPHY BY MADDOX ENGINEERS & SURVEYORS, INC.

THIS SITE IS IN THE LITTLE SENECA WATERSHED.

THE SUBJECT PROPERTIES ARE LISTED AS W6/S6 WATER AND SEWER CATEGORIES WHICH INDICATE THAT PRIVATE WATER AND SEWERAGE ARE IN USE. THE DWELLINGS AT 23320 AND 23330 RIDGE ROAD ARE CONNECTED TO PUBLIC WATER SERVICE (W.S.C.).

PARCELS P095 & P071 TAX MAP GRID FW11.

W.S.C. GRID 232NW11.

THE POSITION OF THE EXISTING WATERLINE SHOWN HEREON IS BASED ON LOCATION OF SURFACE STRUCTURES AND AS-BUILT DRAWINGS FROM W.S.C.

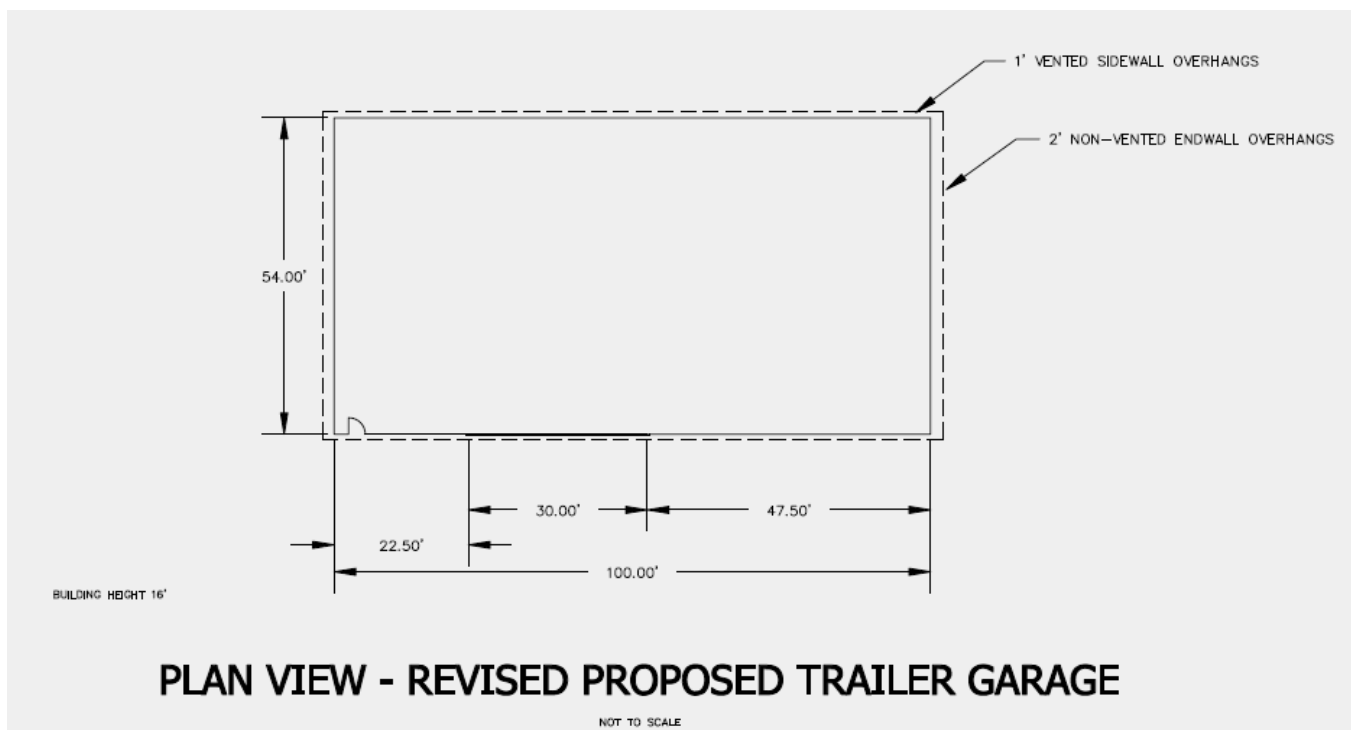
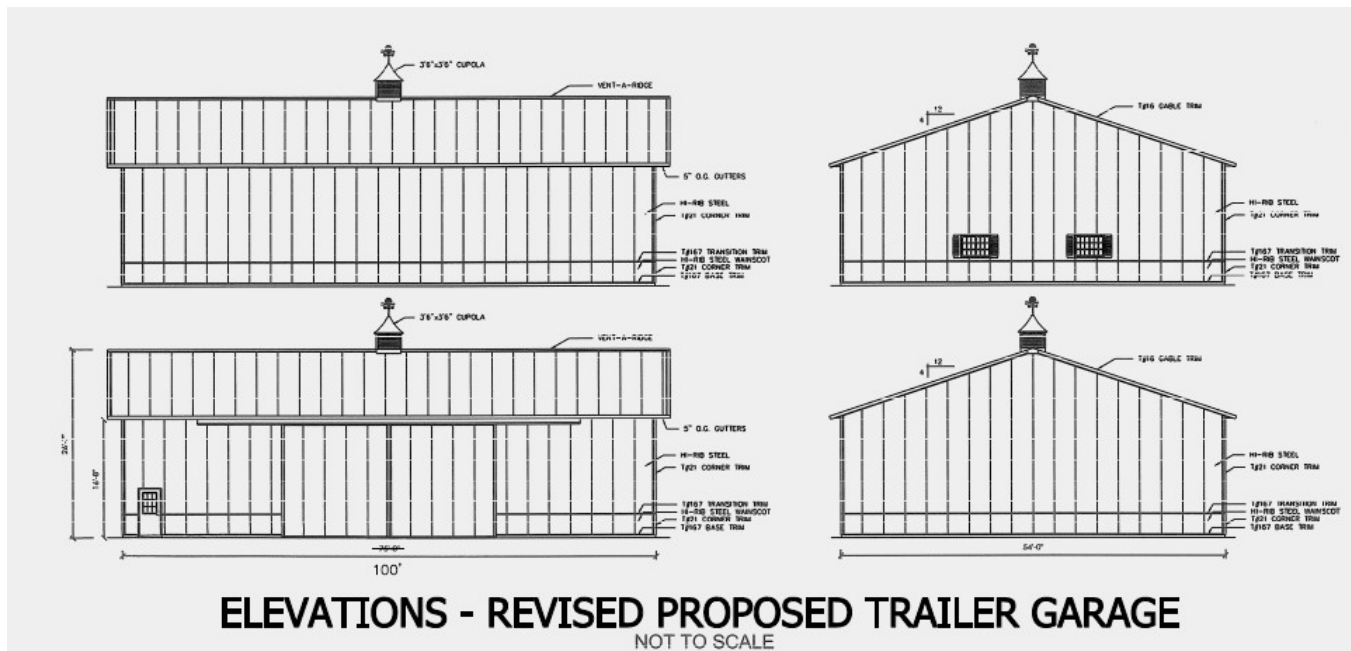
THE LOCATION OF EXISTING WELLS AND SEPTIC ARE BASED ON INFORMATION ON RECORD AT THE WELL & SEPTIC SECTION OF MONTGOMERY COUNTY DEPARTMENT OF PERMITTING SERVICES.

DEVELOPMENT STANDARD	REQUIRED	PROVIDED
MIN. AREA	8 AC.	8 AC.
MIN. SETBACK	50'	50'
MIN. EXISTING SETBACK	20'	24.5'
ROAD ACCESS	PRIMARY OR HIGHER	ARTERIAL
PARKING:	1-1/2 SP/1000 SF 17,000 SF @ 1-1/2 = 25 RES 2/DU @ 2 = 4 TOTAL 29	40 SP OUTSIDE 12 SP INSIDE BLDG 52 SPACES
LOT COVERAGE		
MAXIMUM (RC ZONE): 10%	EXISTING: 5.6%	PROVIDED: 6.8%
BUILDING HEIGHT		
MAXIMUM (RC ZONE): 50'	EXISTING: 28.5'	PROVIDED: 28.5'

Petitioner also supplied an illustrative site plan depicting the property without some of the districting details contained in the formal site plan (Exhibit 44(j)):



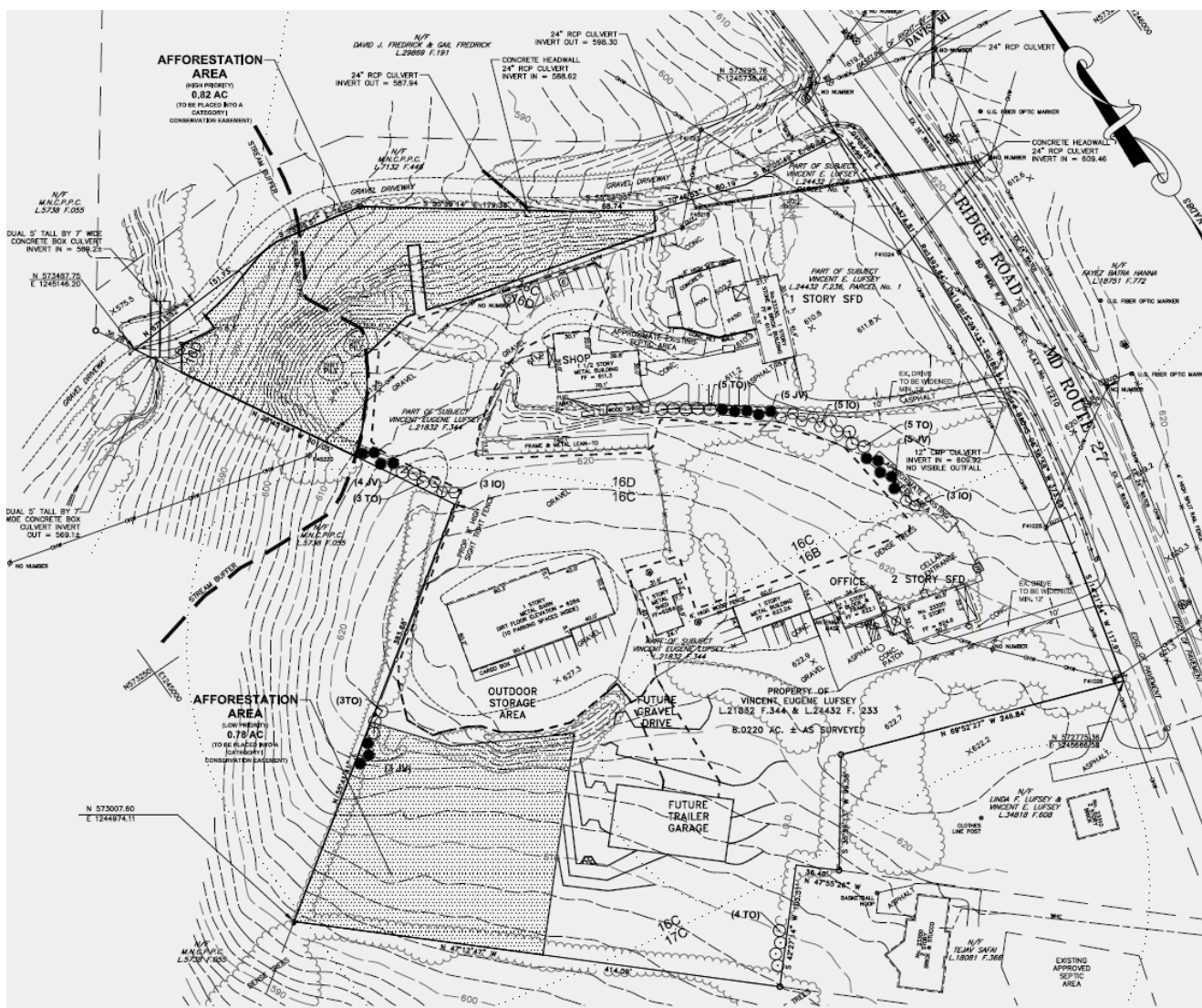
The only new structure planned for the site is a trailer garage that will be located at the southern end of the site. It is labeled “Future Trailer Garage” on the above plans. It was originally planned as a building 54 feet by 75 feet; however, Petitioner expanded the planned building to 54 feet by 100 feet to conform to a standard sized, pre-engineered building. The proposed trailer garage is depicted on the site plans reproduced on the preceding pages and in elevations and plan views shown below (Exhibits 52(a) and (b)):






Technical Staff approved the change, indicating that it would have no negative impacts. Exhibit 45. In the same e-mail to the Hearing Examiner, Staff also approved the increase in the number of porta-potties stored on site from 500 to 850 and the number of mobile restroom trailers from 10 to 12. The onsite storage area was expanded to accommodate the additional equipment (as shown by “Xs” on Exhibit 44(j), reproduced on page 15 of this report), and Staff approved that as well. Exhibit 45. There is no evidence in the record that these changes will create any problems, and the Hearing Examiner therefore finds that they will not have any undue adverse effects.

Landscaping, Lighting and Signage:

The revised landscape plan consists of three sheets (Exhibits 44(f), (g) and (h)). The overall plan (Exhibit 44(f)) is shown below:



PLANT SCHEDULE - RECOMMENDED SPECIES LIST							
SYMBOL	KEY	QUANTITY	SIZE	SCIENTIFIC NAME	COMMON NAME	SPACING	COMMENTS
	IO	11	4-5'	<i>Ilex opaca</i>	American Holly	10' o.c.	
	JV	17	6-7'	<i>Juniperus virginiana</i>	Eastern Redcedar	10' o.c.	
	TO	20	6-7'	<i>Thuja occidentalis</i>	Eastern Arborvitae	10' o.c.	

Technical Staff recommended approval of special exception S-2749 and waiver of the 20-foot driveway width requirement, subject to the following conditions (Exhibit 31, p. 1):

1. The landscape plan must be revised to incorporate the supplemental planting for additional perimeter screening for review and approval by Planning Board staff before a decision on the case is made by the Board of Appeals.
2. Each of the two existing driveways must be widened from the existing 10 feet to a minimum of 12 feet.

The driveway-width waiver issue will be discussed elsewhere in this report. As to the landscaping, Petitioner submitted a revised landscape plan, shown above, which Technical Staff approved after the hearing, on March 3, 2010 (Exhibit 45). Thus, Staff's first condition has been satisfied. There are no other issues regarding landscaping.⁶

Petitioner filed a photometric plan (Exhibit 44(i)), which demonstrates, as stated by Technical Staff, that "[t]he proposed lighting will not cause glare on adjoining properties, nor will it exceed the 0.1 foot-candle standard at the side and rear property lines."⁷ Exhibit 31, p. 9.

⁶ There was some confusion during the hearing over an inconsistency between the site plan and the other plans regarding a landscaping strip on the western side of the site. The confusion was cleared up by Petitioner's surveyor and his arborist (Messrs. Russell Reese and Joshua Maisel) who testified that the site plan had shown an extra strip of landscaping running north to south along the western edge of the site, but since Petitioner will be required to create an afforestation area adjacent to that area, the additional landscaping strip is not needed, and the site plan would be modified to so reflect. Landscaping running between the afforestation areas will remain, and the screening is adequate to buffer the neighboring properties. Tr. 98-102 and 116-117. After the hearing, Petitioner filed a revised site plan (Exhibit 44(d)), from which the unneeded landscaping strip was removed. This change was approved by Staff (Exhibit 45).

⁷ It is doubtful that this standard actually applies in this case because the site is not in a residential zone, and Zoning Ordinance §59-G-1.23(h) specifies its application to "Lighting in residential zones"; however, there are adjacent residential properties, and the fact that the lighting meets this standard assures compatibility in that context.

Signage is not an issue because there will be no signs on the property. Customers never come to the site, and customer contacts are conducted by phone. Tr. 78.

C. The Master Plan

The site in question is subject to the 1994 Clarksburg Master Plan and Hyattstown Special Study Area (the “Master Plan”). The property is in the “Ridge Road Transition Area,” which includes about 900 acres located along Ridge Road adjoining the Damascus Planning Area, as identified on pp. 72-74 of the Master Plan. As noted by Staff, an important feature of the area is the 294-acre Ovid Hazen Wells Park. “The park provides a logical “edge” to more dense development to the south in the Newcut Road Neighborhood of Clarksburg and marks the beginning of the transition into Damascus.” December 16, 2009 Vision Division Memo attached to Exhibit 31.

The Plan proposes low density, residential development for the area surrounding Cedar Grove, which will help assure its rural setting. It also encourages the maintenance of existing trees and major landscaping features in the historic district to preserve its rural nature.

Petitioner’s land planner, Phil Perrine, states in his land use report (Exhibit 44(b), p. 6):

The 1994 Clarksburg Master Plan proposes to utilize the expansive, 294-acre Ovid Hazen Wells Park to create an edge to the denser, residential development to the south separating it from the transition to Damascus to the north. The Master Plan also proposes low-density residential development to surround the Cedar Grove Historic District to create an attractive rural setting.

Community Based Planning Staff (*i.e.*, the “Vision Division”) concluded, “This proposal conforms to the 1994 Clarksburg Master Plan and Hyattstown Special Study Area in Montgomery County; staff recommends the approval of the special exception.” December 16, 2009 Vision Division Memo attached to Exhibit 31.

Based on this undisputed record, the Hearing Examiner finds, as did Technical Staff, that the proposed use is in conformance with the 1994 Clarksburg Master Plan and Hyattstown Special Study Area.

D. Adequacy of Public Facilities

Pursuant to Zoning Ordinance §59-G-1.21(a)(9), if a special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review, but if the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. This case is in a somewhat unusual middle ground, as explained by Technical Staff (Exhibit 31, pp. 12-13):

The site plan showed a future storage garage on the property. The Petitioner has since indicated that there was no immediate need or plan for this structure to be built and that the proposed operation could function and be approved without it. Subdivision staff determined that a record plat would not be required until such time as a building permit application was filed. This site will be subject to subdivision (preliminary plan and record plat) before any building permit may be issued.

Given this posture, Staff assessed the adequacy of public facilities in its report, as did Petitioner's expert witnesses. The Hearing Examiner recommends that the Board of Appeals make the determination regarding public facilities based on the evidence presented at this time. The Hearing Examiner has also proposed a condition which specifies that approval of a preliminary plan of subdivision will be a condition of the special exception, if and when Petitioner applies for a building permit and is required to go through subdivision.

Petitioner's land planner, Phil Perrine, addresses public facilities in his revised land planning report (Exhibit 44(b), p. 3):

The Property is classified in the W-6/S-6 water and sewer service categories. The existing houses are served by separate septic systems and private wells. The Damascus Fire Station #13 is located at 26334 Ridge Road, approximately 3.5 miles to the north. Transportation facilities are addressed in a separate report. With regard to public schools, the Special exception does not generate any students and, thus, has no impact on the surrounding school facilities.

Technical Staff agrees. "The proposed use will be adequately served by existing public facilities."

Exhibit 31, p. 13.

Transportation Facilities:

With regard to transportation facilities, Petitioner called C. Craig Hedberg as an expert. Mr. Hedberg prepared a transportation statement dated April 1, 2009 (Exhibit 11), which summarizes the peak period projected trips for the existing condition and for the proposed situation. Although the number of proposed portable toilets increased after he prepared his transportation statement, Mr. Hedberg indicated that the number of porta-potties is not really relevant to the trip assessment because the trips are generated on the basis of the employees and the operations. Tr. 128.

Mr. Hedberg used the information contained in the Statement of Operations relative to the scheduling of the employees and the various types of users that are coming in and out. On the basis of the scheduling, he determined that there are currently a maximum of 13 a.m. peak period trips, and in the future situation, there would be 18 a.m. peak period trips, both of which fall under the 30 peak-hour trip criterion which would require a full local area transportation review. This estimate is very conservative because it looks at the entire peak period of three hours, not just the peak hour.⁸ “This is the absolute worst conditions that could exist and the actual conditions, in my opinion, would be less than what I have presented.” Tr. 129. Given the small number of trips (*i.e.*, under 30 during a peak hour), a full traffic study is not required under Local Area Transportation Review (LATR).

When the initial application was being developed, there was no policy area mobility review (PAMR) requirement in Clarksburg. By the time the application was filed, the Planning Board adopted a 10 percent PAMR mitigation requirement for Clarksburg, and therefore Mr. Hedberg prepared the supplemental memorandum dated September 9, 2009 (Exhibit 24) which addressed that issue. That memorandum noted that the increase in trips in the future was forecast to be a maximum of five peak period trips. Ten percent of the five trips is a half a trip, and the provisions for Policy

⁸ The evening peak period trip projection was even lower, at 10 current trips and 15 projected during the p.m. peak period.

Area Mobility Review require mitigation measures only when the increase is a whole trip or greater. Thus, there is no PAMR requirement for the subject application. Tr. 130.

At the suggestion of the Hearing Examiner, Mr. Hedberg filed an updated traffic statement confirming his testimony that the increase to 850 porta-potties and 12 bathroom trailers will not add to the number of trips projected because it is based on employee trips which will not change. Exhibit 44(c).

The addition of weekend hours also does not change the transportation analysis in that the weekend intensity is less than the weekday in any case. In Mr. Hedberg's opinion, there will be no adverse transportation impacts associated with the proposed special exception. He noted that the site is in a rural area, and there isn't any pedestrian activity. Hence, there is no pedestrian safety issue in his opinion. There are also no vehicular safety issues. Tr. 132-133.

Technical Staff agreed with Mr. Hedberg's analysis, concluding that both LATR and PAMR are satisfied. Exhibit 31, pp. 5-6. Staff also found, "The proposed use should not negatively impact the safety of vehicular or pedestrian traffic." Exhibit 31, p. 13.

Parking:

There are two parking requirements that bear on this special exception. Zoning Ordinance §59-E-3.7 requires two parking spaces for each single-family dwelling unit on the site, and §59-G-2.54.3(f) specifies, "One and one-half parking spaces must be provided on-site for each 1,000 square feet of total floor area and sufficient area provided for loading and unloading of trucks."

Based on information provided on the site plan, Technical Staff concluded that development on the site, excluding the two dwellings, accounts for a total of 17,000 square feet of floor area. Based on that finding, Staff determined that 26 parking spaces are required ($1.5 \times 17 = 25.5$) for the commercial use and 4 parking spaces for the residential use, for a total parking requirement of 30 spaces. Exhibit 31, p. 15. Since that calculation was made before Petitioner proposed to increase the

size of its trailer garage by 1,350 square feet (25 feet X 54 feet = 1,350 foot expansion), the Hearing Examiner calculates that that additional floor space would potentially add a requirement for 2 more parking spaces ($1.5 \times 1.35 = 2.03$), bringing the total requirement to 32 parking spaces.⁹ A total of 52 spaces, including 2 handicap spaces, are provided, more than meeting the requirements. Staff also found that “sufficient area provided for loading and unloading of trucks.” Exhibit 31,p. 15.

E. Waiver Request

Petitioner has requested that he be granted a waiver of the requirement that the two 10 foot wide driveways serving his site be widened to 20 feet each, which is the standard set for two-way driveways in Zoning Ordinance §59-59-E-2.41(b). Transportation Planning staff agreed that the driveways need not be 20 feet wide, but must meet at least the minimal 12 foot width provided in the County’s “Context Sensitive Road Design Standards,” as stated below (Exhibit 31, p. 6):

Two driveway access points to the site exist on Ridge Road (MD 27). The driveways are both ten feet wide. According to Montgomery County’s Context Sensitive Road Design Standards, the width of a commercial driveway must be a minimum of 12 feet wide and a maximum of 35 feet wide (MCDOT Standard No. 302-01). Staff recommends that the Petitioner widen the two existing driveways from the existing 10 feet to a minimum 12 feet. Staff finds that since there is no continuous commercial traffic activity on these driveways, the 12-foot-width is adequate to provide safe access to the site. Since the site is accessed from a State Road (MD 27) the recommended driveway width is subject to approval by SHA. Due to the location of the site in a rural area without existing sidewalks, no pedestrian facilities are needed for this use.

At the hearing, Petitioner’s land planner pointed out that State Highway Administration (SHA) approval was not actually required because the driveways are each at least twelve feet wide in the area which is on the State right-of-way. When this fact was pointed out to Transportation Staff, they agreed that SHA approval was not required. Tr. 51-53.

⁹ The Hearing Examiner notes that in most cases it does not make sense to increase the parking space requirement based on the addition of a garage, which by its nature usually adds parking space; however, it appears that Technical Staff included the original proposed size of the garage in its 17,000 square foot estimate for the amount of commercial floor area. The Hearing Examiner therefore attempted to be consistent. Moreover, the floor space being added is for trailer storage, not the kind of parking space envisioned by the Code. In an event, the calculation does not have any impact in this case because the amount of parking provided far exceeds that which is required. Nevertheless, this calculation should not be taken as a precedent for calculating required parking in future cases.

Petitioner's traffic engineer testified that the nature of the driveway activity is virtually one directional, at any given time, with very low trip generation, so the usage of the driveway is very minor in nature. Even though these driveways, if the waiver is approved, would be 12 feet wide instead of the usually required 20 feet for a two-way driveway, that would not create any safety hazard. Tr. 133-134.

Waivers of the driveway width requirements and other standards set forth in Article 59-E of the Zoning Code may be granted by the Board of Appeals pursuant to §59-E-4.5, which provides:

The Director, Planning Board, or Board of Appeals may waive any requirement in this Article not necessary to accomplish the objectives in Section 59-E-4.2, and in conjunction with reductions may adopt reasonable requirements above the minimum standards. Any request for a waiver under this Section must be referred to all adjoining property owners and affected citizen associations for comment before a decision on the requested waiver.

The required notice was given to all adjoining property owners and affected citizen associations on January 12, 2010 (Exhibit 30). Technical Staff reviewed the waiver request and determined that as long as both driveways were at least 12 feet wide, they would meet the objectives of §59-E-4.2 (Exhibit 31, pp. 16-17).

The health, safety, and welfare of those using the adjacent land are protected. The existing two driveways do not abut adjacent property. The northern driveway is completely surrounded by the subject property, and the southern driveway is located 60 to 67 feet from the property to the south, with trees intervening. Therefore, there is sufficient distance and screening in place to prevent, noise, glare, reflection. In addition, the adjacent property to the south includes an asphalt driveway and parking area along its northern property line.

* * *

There is a separate walk for pedestrians near the house and pedestrians will likely not walk from MD 27 up the driveway to the front door. The driveway will only be used by vehicles.

* * *

Both driveways points of access exist at present and have for a number of years. . . .

The amount of traffic utiliz[ing] the driveway[s] is very low and is highly directional, i.e. employees arrive in the morning, some leave in trucks immediately and return in the afternoon, and all depart in the late afternoon.

* * *

Technical Staff concluded that Petitioner had met the burden of proof under Section 59-E-4.5 to justify driveway width of not less than 12 feet for both driveways. Given the un rebutted evidence that was presented, the Hearing Examiner so finds.

F. Environmental Impacts

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) for the 8.02-acre site was approved by Environmental Planning staff on October 22, 2008. Exhibit 7(b). According to Technical Staff, there is a “second order stream” that crosses the subject property along the far northwest corner, and the associated stream valley buffer occupies a small segment of that corner of the property. Steep slopes are found in the northwest corner and along a portion of the northern property line. There are no forests, wetlands or streams on-site, and the property is not located within a Special Protection Area. Exhibit 31, p. 6.

Forest Conservation:

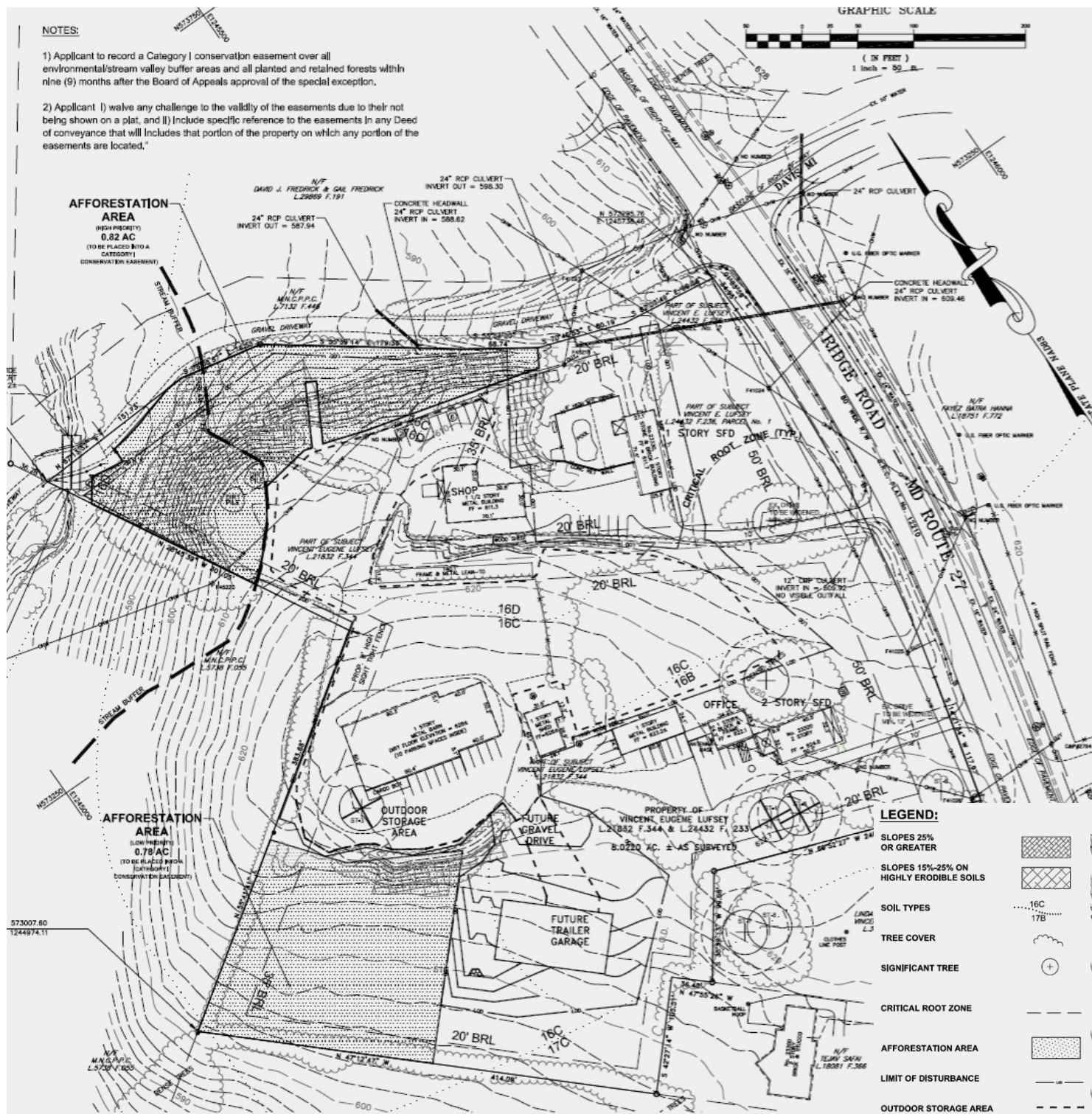
The property is subject to the Montgomery County Forest Conservation Law and Petitioner ‘s Preliminary Forest Conservation Plan (PFCP) was approved by the Planning Board. Exhibit 42 is Technical Staff’s conditional approval of the PFCP, and Mr. Chen represented that the Planning Board approved the PFCP before the OZAH hearing. Tr. 120. Exhibit 43 is an e-mail from M-NCPPC General Counsel’s Office requiring certain conditions for the PFCP. The PFCP was revised after the hearing by adding a notation with those conditions (Exhibit 44(e)).

Technical Staff reported (Exhibit 31, p.7):

Because the property is located within the Agricultural and Resource land use category, it is required to meet its forest planting requirements on the subject property. Consequently, it was determined that, in this particular case, 20 percent of the subject property must be afforested for a total planting requirement of 1.6 acres. The Petitioner has proposed to meet the afforestation requirement on-site by planting two separate areas, (one 0.78 acres and the other 0.82 acres) and placing both into Category I Forest Conservation Easements (FCE).

These afforestation areas can be clearly seen on the revised PFCP (Exhibit 44(e)), reproduced below,

and on the illustrative site plan (p.15 of this report) and the landscape plan (p. 17 of this report):



Stormwater Management:

Technical Staff notes that stormwater management is not required at this stage of review, but

“a stormwater management concept was approved with conditions by the Department of Permitting Services [DPS] on September 24, 2009. [Exhibit 27(a).] The stormwater management concept consists of on-site channel protection measures and on-site water control via the use of Environmental Site Design (ESD).” Exhibit 31, p. 7. DPS also permitted Petitioner to eliminate some stormwater facilities that had been planned for the site in the initial stormwater management concept plan, a change which allows Petitioner to use those areas for additional outdoor storage. Tr. 105-106.

There are no other environmental issues in this case, and the Hearing Examiner finds that there is no evidence that the proposed use will harm the environment.

G. Community Response

There has been no opposition to the subject proposal. The only community response is contained in a letter from Kathie Hulley of the Clarksburg Citizens Association, indicating that its “planning committee” had no objections to the plans for the site. The letter, which was forwarded to Staff by Petitioner’s counsel, concludes with a statement supporting approval of the petition. Exhibit 23(a).

Martin Klauber, Esquire, the People’s Counsel, participated in the hearing, and testified as a witness to the fact that, when traveling along Ridge Road, alongside the subject site, in daylight, he has never noticed any activity thereon. Tr. 88. He also indicated his support for the petition, noting that Petitioner has been very flexible in making changes requested by the Office of the People’s Counsel. Tr. 18 and 88.

III. SUMMARY OF THE HEARING

Petitioner called five witnesses at the hearing, Vincent E. Lufsey, the owner; Phil Perrine, a land planner; Joshua Maisel, an arborist and landscape architect; Russell Reese, a land surveyor; and Craig Hedberg, traffic engineer. There was no opposition.

At the outset of the hearing, Petitioner's attorney, William Chen, and Martin Klauber, the People's Counsel noted on the record that both Technical Staff and the Planning Board had been made aware of Petitioner's proposal to increase the number of portable toilets to 850 and mobile restroom trailers to 12, prior to the Planning Board's recommendation of approval for the petition. Tr. 5-7.

Mr. Chen also indicated that this case represents the first time that this type of special exception has been considered by the Board of Appeals. In fact, the specific use in this case was the motivating factor for enacting the Zoning Text Amendment (ZTA) which created the special exception, since the use had outgrown its former status as a registered home occupation. Tr. 13-17. This background was noted in the opinion accompanying ZTA 07-16, which created the special exception (Ord. No. 16-17, effective May 5, 2008), a copy of which is in the record as Exhibit 9.

The People's Counsel, participated in the hearing, and testified as a witness. Tr. 18 and 88. At the end of the hearing, the record was held open until March 22, 2010, to allow revised submissions, analysis by Technical Staff and public comment.

A. Petitioner's Case

1. Phillip Perrine (Tr. 18-55):

Phillip Perrine testified as an expert in land planning. Using an aerial photo (Exhibit 39), Mr. Perrine defined and described the general neighborhood, as well as the subject site itself. On the subject site, there are two houses, one on each of the parcels, with access to Ridge Road. There is extensive frontage along Ridge Road and an extensive setback from Ridge Road. There are some porta-toilets that are stored to the rear of the property.

The neighborhood, as defined by Mr. Perrine, would extend on the west to the Ovid Hazen Wells Park, including the frontage of the park. To the north, the boundary would run through the area of Cedar Grove just to the north of the Davis Mill Road intersection. On the east, the neighborhood

would include the residences along Ridge Road, the two churches and residences along Davis Mill and a retail landscape horticultural use on the east side of Ridge Road. To the south, it would include the single-family homes along Ridge Road, both on the west and the east side. As noted by Mr. Perrine, the general neighborhood is “a mixed-use area.” It is “a mix of agricultural, essentially, institutional, the park and the churches, and commercial uses, the retail landscape operation and the commercial use at Cedar Grove, as well as residential.” Tr. 22-23. Mr. Perrine indicated that Technical Staff agreed with his definition of the neighborhood, and that he would outline the neighborhood on an aerial photo from the Staff report, and return it as Exhibit 40. Tr. 27 -28.

Mr. Perrine used the special exception site plan to describe the structures on the site. He testified that none of the buildings were erected on the property by the Lufsey family, but rather were there when they purchased the site. Petitioner proposes to build a trailer garage, to the southern part of the property. It is contemplated that the mobile restroom trailers would be parked inside that garage. They are valuable pieces of equipment and the idea is to protect them, but there is space on the surface right now for them. Mr. Perrine also identified the parking areas and locations for storing the mobile bathroom trailers. The code requirement is one-and-a-half parking spaces per 1,000 square feet of building, plus two spaces for each residence, which adds up to a total requirement of 29 parking spaces. However, they need 52 spaces in order to accommodate the number of employee cars and other kinds of equipment vehicles on site. Tr. 31-35.

Mr. Perrine noted that there is additional landscape buffering around the operating part of the property to the rear of the buildings. The existing residences are well-screened. He also introduced a panoramic photo view of the site from Ridge Road (Exhibit 6(f)) to demonstrate that the activities on the site are not visible from the road because of the large setbacks. Tr. 35-38. On the western border, there is a planting strip to protect the stream valley buffer. Tr. 42.

Mr. Perrine opined that although being adjacent to a park is a non-inherent part of an

outdoor storage, the buffering in place and the extensive setbacks and screening will prevent any adverse effect related to that non-inherent factor. It will also be compliant with §59-G-2.54.3(d), in that the screening will prevent visual impact on adjoining and confronting properties. Tr. 46.

Mr. Perrine further testified that Petitioner wanted to have the driveway width requirements waived down to the existing 10 feet, but Technical Staff indicated that they should be at least 12 feet wide to meet the minimum County commercial standard of 12 feet. The driveways are already 12 feet or wider within the State right-of-way, so the widening would have to happen just on the private property part, and there would be no need for State Highway review since there would be no proposed work, construction, rebuilding or anything within the State right-of-way. Tr. 51-52.

Mr. Perrine adopted the opinions in his land planning report, and a revised version to be filed, that the petition meets the standards for the special exception and the driveway width waiver. Tr. 53-54. He also indicated his agreement with Staff's findings. Tr. 55.

2. Vincent E. Lufsey (Tr. 56-87):

Vincent Lufsey testified that the purpose of the special exception is to continue doing business in Montgomery County, and he outlined the history of the business. There are two detached, single-family dwellings on the property, one of which is occupied by Petitioner's father, and the other by a family friend. Mr. Lufsey indicated that when the home occupied by the friend becomes vacant, he would like to move his offices into that residence; however, there is no current issue in that regard.

Mr. Lufsey identified the photographs of the site and equipment in Exhibit 14. He also testified that he needed to increase the storage from 500 to 850 portable toilets and from 10 to 12 mobile bathroom trailers because the decline in the economy has resulted in a reduction of the need for such facilities at constructions sites, and therefore causes the need to store more of them on his property. Such storage will not result in an intensification of the use because it will actually reduce the number of trips, and the equipment can fit in the specified storage areas on site.

Other changes sought by Mr. Lufsey are to increase the size of the two pickup trucks to 5.5 tons each to allow them to haul larger mobile bathroom trailers, and to increase the size of the proposed trailer garage from 54 x 75 to 54 x 100 to accommodate the growth of the needed restroom trailers. Finally, Mr. Lufsey would like to increase the outdoor storage area (as shown in Exhibit 44(j), the revision of Exhibit 41).

There are no proposed changes to the existing buildings on the site, and there is no signage proposed for the property. There is no treatment of any waste or fluid on the site; rather, Petitioner's pumper trucks go out and service these portable toilets on construction sites, pursuant to a WSSC permit. At the end of the day, they empty the trucks at a WSSC approved facility on Muddy Branch Road.

Mr. Lufsey proposes weekend operations that would be the same as weekday operations from 8:00 to 4:00 for office employees and 7:00 to 3:30 for shop employees and delivery drivers. Route drivers would be 4:00 a.m. to 6:00 a.m., out 7:00 a.m., return 4:00 p.m. All of that would be the same on weekends except it would happen less frequently.

Mr. Lufsey states that he has never had any complaints from the neighbors.

3. Russell E. Reese (Tr. 89-107):

Russell Reese testified as an expert land surveyor. He prepared the site plan and an engineer at this firm prepared the stormwater management concept plan. That plan was approved by DPS (Exhibit 27(a)). DPS also permitted Petitioner to eliminate some stormwater facilities that had been planned for the site, which allows Petitioner to use those areas for additional outdoor storage.

Mr. Reese further testified that the site plan had shown an extra strip of landscaping running north to south along the western edge of the site, but since Petitioner will be required to create an afforestation area adjacent to that area, the additional landscaping strip is not needed, and the site plan needs to be modified to so reflect. Landscaping running between the afforestation areas will remain.

Tr. 98-102. Also, the site plan shows, for each specific driveway, that they are to be widened to a minimum of 12 feet.

According to Mr. Reese, expanding the proposed trailer garage will not render the setbacks non-compliant with the Code.

4. Joshua O. Maisel (Tr. 107-125):

Joshua Maisel testified as an expert arborist and landscape architect. He prepared the a natural resources inventory and the Preliminary Forest Conservation Plan (PFCP), both of which have been approved by M-NCPPC. [Exhibit 42 is Technical Staff's conditional approval of the PFCP, and Mr. Chen represented that the Planning Board approved the PFCP before the OZAH hearing. Tr. 120. Exhibit 43 is an e-mail from M-NCPPC General Counsel's Office requiring certain conditions for the PFCP. The PFCP was revised after the hearing by adding a notation with those conditions (Exhibit 44(e).]

Mr. Maisel also described the photometric plan for the site. Based on the existing fixtures that Mr. Lufsey has and the proposed fixtures he wishes to use, Mr. Maisel determined that there will be 0.0 light at the property lines, and Park and Planning supported those findings. In his opinion, there will be no objectionable glare emanating from the special exception.

Mr. Maisel agreed with Mr. Reese that the north-south screening shown on the western side of the property is in an area that's going to be afforested and therefore should not be depicted on the plans. That north-south screening stick on the northwestern side doesn't need to exist because the afforestation area will provide the screening necessary. In his opinion, the proposed landscaping improvements that will be included will adequately screen the special exception from neighboring properties. Tr. 116-117.

5. C. Craig Hedberg (Tr. 126-134):

C. Craig Hedberg testified as an expert in traffic planning and engineering. Mr. Hedberg met

with Technical Staff, who agreed that this was a very low traffic generator and suggested that the appropriate route to take would be to prepare a transportation statement. He prepared a transportation statement dated April 1, 2009 (Exhibit 11), which is designed to summarize what the peak hour projected trips are, both for the existing condition and for the proposed situation. Although the number of portable toilets has been increased, and the initial transportation statement references 500 portable toilets, which was the number at that time, that porta-potty number is not relevant to the trip assessment because the trips are generated on the basis of the employees and the operations.

Mr. Hedberg used the information contained in the Statement of Operations relative to the scheduling of the employees and the various types of users that are coming in and out. The typical analysis is at peak hour within the 6:30 to 9:30 a.m. and the 4:00 to 7:00 p.m. peak periods. On the basis of the scheduling, he determined that there are currently a maximum of 13 a.m. peak period trips and in the future situation, there would be 18 a.m. peak period trips, both of which fall under the 30 peak hour trip criterion which would require a full local area transportation review. It's almost a diminimus type impact when it gets below 29 or fewer trips. The estimate is very conservative because it looks at the entire peak period of three hours, not just the peak hour. "This is the absolute worst conditions that could exist and the actual conditions, in my opinion, would be less than what I have presented." Tr. 129.

When the initial application was being developed, there was no policy area mobility review requirement in Clarksburg. By the time the application was filed, the Planning Board adopted 10 percent PAMR mitigation requirement for Clarksburg, and therefore Mr. Hedberg prepared the supplemental memorandum dated September 9, 2009 (Exhibit 24) which addressed that issue. That Memorandum noted that the increase in trips in the future conditions was forecast to be a maximum of five peak period trips. Ten percent of the five trips is a half a trip, and the provisions for Policy Area Mobility Review require mitigation measures only when there's a whole trip and greater. Thus,

there is no PAMR requirement for the subject application.

[At the suggestion of the Hearing Examiner, Mr. Hedberg filed an updated traffic statement confirming his testimony that the increase to 850 porta-potties and 12 bathroom trailers will not add to the number of trips projected because it's based on employee trips which will not change.]

The addition of weekend hours also does not change the transportation analysis in that the weekend intensity is less than the weekday in any case. In Mr. Hedberg's opinion, there will be no adverse transportation impacts associated with the proposed special exception. He noted that the site is in a rural area, and there isn't any pedestrian activity. Hence, there is no pedestrian safety issue in his opinion. There are also no vehicular safety issues. Tr. 132-133.

As to the requested driveway-width waiver, the applicant has agreed to widen the driveways on site to 12 feet, and the nature of this activity is virtually one directional, initially coming in the morning, with very low trip generation, so the usage of the driveway is very minor in nature. Even though these driveways, if the waiver is approved, would be 12 feet wide instead of the usually required 20 feet for a two-way driveway, that would not create any safety hazard. Tr. 133-134.

B. People's Counsel

Martin Klauber, the People's Counsel (Tr. 18, 87-88):

The People's Counsel, participated in the hearing, and testified as a witness to the fact that, when traveling along Ridge Road, alongside the subject site, in daylight, he has never noticed any activity thereon. Tr. 88. He also indicated his support for the petition, noting that Petitioner has been very flexible in making changes requested by the Office of the People's Counsel. Tr. 18 and 88.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-

specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Zoning Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Zoning Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an Outdoor Storage use. Characteristics of the proposed Outdoor Storage use that are consistent with the “necessarily associated” characteristics of Outdoor Storage uses will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with Outdoor Storage uses, or that are created by

unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff opined that the inherent physical and operational characteristics associated with Outdoor Storage uses include (Exhibit 31, p. 9):

- (1) large buildings, including garages, storage sheds, repair shops, and offices;
- (2) large outdoor storage areas and outdoor parking for trucks and trailers;
- (3) driveways and parking lots;
- (4) lighting; and
- (5) vehicular trips to and from the site by employees, visitors, residents, delivery, and trash pick-up.

Petitioner's land planner, Phil Perrine, discussed the inherent physical and operational characteristics associated with Outdoor Storages uses in his revised land planning report (Exhibit 44(b), pp. 9-10):

An Outdoor Storage Facility could include, as indicated specifically in the special exception description at Section 59-G-2.54.3, portable toilet storage. The size of the facility may range upward from eight acres, and the scale and scope would normally include vehicles for the transport of the portable toilets and equipment for loading and unloading the portable toilets, and equipment and trucks necessary for servicing the portable toilets while off-site. Also, as identified in Section 59-G-2.54.3 (e), the use may include equipment to make minor repairs to equipment and vehicles used in the operation of the business, as well as a building within which the repairs are performed. On-site lighting would normally be associated with this use since arrivals and departures would likely occur early in the morning to avoid peak-hour traffic, with other lighting provided as a security measure. Presumably, very limited noise would emanate from a storage use, and traffic would generally be minimal, associated only with the limited trips by employees. Not many employees are usually required to operate a storage facility and site visits by clients and customers area extremely rare, unlike retail or service businesses. Since the outdoor storage of material requires fairly extensive amounts of impervious or semi-impervious surface areas it is expected that the installation of stormwater management facilities would occur.

This petition includes items normally expected with outdoor storage: driveways, gravel storage areas, agricultural/industrial-type storage buildings, outdoor parking of vehicles, trucks, and trailers, and stormwater management facilities to control runoff. . . .

Technical Staff concluded that the proposed use had no non-inherent characteristics (Exhibit 31, pp. 9-10):

The scale of existing and proposed buildings, the number of access points, the internal vehicular circulation system, onsite parking areas, garages, sheds, large outdoor storage areas shown on the site plan are operational characteristics typically associated with an outdoor storage area. There are no non-inherent characteristics associated with the application. The proposed outdoor storage facility is consistent with all applicable standards of the R-C zone and satisfies all applicable requirements for an outdoor storage special exception. Based on the traffic analysis, the vehicular and pedestrian movement surrounding the site and on the adjacent Ridge Road would be safe, adequate, and efficient. The lighting concept as depicted on the lighting plan is appropriate for the proposed use at the subject location.

Mr. Perrine concluded that all but one of the characteristics of the use (*i.e.*, the site's location next to a park) were inherent in this type of use (Exhibit 44(b), p. 10):

. . . The use is located along MD 27, an arterial road consistent with arterial road standards, and there are no adverse effects related to the inherent characteristics. The site is adjacent to Ovid Hazen Wells Park, a large, regional park, which is a characteristic, non-inherent to an outdoor storage facility, however in light of the screening provided along the boundary adjacent to the Park and the low level of Park development in the immediate area there are no adverse effects.

Mr. Perrine testified that although being adjacent to a park is a non-inherent part of an outdoor storage use, the buffering in place and the extensive setbacks and screening will prevent any adverse effect related to that non-inherent factor. Tr. 46. Technical Staff agreed that none of the characteristics of the use would create adverse effects warranting denial of the petition (Exhibit 31, p. 10):

With the recommended conditions of approval, the inherent and non-inherent impacts associated with the proposed use do not rise to a level sufficient to warrant a denial of the application.

The Hearing Examiner agrees with Mr. Perrine's observation that location of the site adjacent to a park is a non-inherent characteristic of the use, but that any impacts from the proximity to the park are vitiated by the extensive setbacks and adequate screening. Therefore, the Hearing Examiner concludes, as did Technical Staff and Mr. Perrine, that considering size, scale, scope, light, noise, traffic and environment, there are no non-inherent effects that require a denial of the petition.

B. General Conditions

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report, the exhibits and the testimony of the witnesses provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) -*A special exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An Outdoor Storage use is a permissible special exception in the RC Zone, pursuant to Code § 59-C-9.3.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.54.3 for an Outdoor Storage use, as outlined in Part C, below.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The property is subject to the 1994 Clarksburg Master Plan and Hyattstown Special Study Area (the "Master Plan"). As discussed in Part II.C. of this report, Technical

Staff concluded that the proposed use is consistent with the Master Plan. Exhibit 31, pp. 5 and 10.

There are no general plan or master plan concerns associated with this application. The existing and proposed development and use on the property is in keeping with the master plan designation of the area for low density residential development. Moreover, the character of the adjacent Cedar Grove Historic District would be maintained and would not be negatively impacted with the proposed use which has been operating from the subject property for the nearly 15 years.

Based on the undisputed record, the Hearing Examiner finds, as did Technical Staff, that the proposed use is in conformance with the 1994 Clarksburg Master Plan and Hyattstown Special Study Area.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The Hearing Examiner agrees with Technical Staff's conclusion that the use will be in harmony with the general character of the neighborhood. As stated by Staff (Exhibit 31, p. 11):

With the recommended conditions, the proposed modification will be in harmony with the general character of the neighborhood and not adversely affect surrounding properties or the general neighborhood. The outdoor storage use, along with all existing improvements, has been at the same location for 15 years. The only notable change to the existing condition would be the proposed addition of the 4,050 square-foot storage garage,¹⁰ which would be located in a clearing on the property substantially distanced from adjoining residential dwellings.

The proposed reclassification of the existing use from a registered home occupation to an outdoor storage facility would not intensify activities nor bring about change in the nature and character of the site or the immediate neighborhood. The existing use has been served by adequate

¹⁰ The size of the proposed garage was expanded to 5,400 square feet after the Technical Staff report was written. Staff agreed, in a later e-mail to the Hearing Examiner (Exhibit 45), that the increase in size did not change its opinion.

facilities throughout its existence; the proposed reclassification of the special exception from a major home occupation to outdoor storage would not intensify the level of services for the existing public facilities.

As demonstrated in Part II. D. of this report, the public facilities are adequate to serve the proposed use. The increase in the number of porta-potties and mobile bathroom trailers stored on site will not increase the number of trips because this increase in storage is due to a decrease in the porta-potty business resulting from the recent decline in construction throughout the economy (*i.e.*, with fewer constructions sites, the demand for porta-potties decreases, resulting in the need for more storage on this site). Tr. 68.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The Hearing Examiner concludes that the proposed use will not be detrimental to the peaceful enjoyment, economic value or development of surrounding properties for the reasons set forth in answer to the previous sub-section. As well stated by Technical Staff (Exhibit 31, p. 11):

The proposed use would not be detrimental to the use, peaceful enjoyment, economic value or development of adjacent properties or the general neighborhood. The existing use has been operated on the property for several years and with the exception of the proposed future addition of a trailer storage garage, no significant expansion of the current operation or intensity in the activities is proposed. Given the fact that no change is proposed in the operation of the facility, it is unlikely that the special exception would generate a level of traffic that would raise concern for congestion on the streets. Additionally, the combined effect of Forest Conservation requirements, staff recommended additional planting along the perimeter; and the topography of the property, would ensure that the low density, rural nature of the immediate neighborhood will be maintained.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff concluded that the use will not cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site (Exhibit 31, p. 11):

The proposed use is not expected to cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site. The portable toilets are stored to the rear of the property and are not visible from Ridge Road. Existing vegetation screens most of the property from adjacent land uses and will be supplemented with additional landscaping and an eight-foot fence to ensure that the use is effectively screened from neighboring properties. The proposed storage building will be used to store toilet facilities completely out of sight.

Mr. Perrine also notes in his land planning report (Exhibit 44(b), p. 13):

... Entry drives, driven on most frequently, are paved so no dust is generated, and the portable toilet storage areas are hard-packed, gravel and are driven on less frequently since they are used for storage. There is no discharging of waste on-site since the portable toilets are emptied and serviced at the site of use, before being returned to the Property. Repairs and maintenance are performed indoors in the on-site buildings. No illumination or glare will occur since there are no homes in close proximity to the active use areas of the Property.

For these reasons, the Hearing Examiner agrees that the special exception would be compliant with this provision.

(7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: The area is characterized by a mix of uses, including agricultural, residential, commercial and institutional uses. Technical Staff reports that the proposed use will not increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter its nature. As stated by Staff (Exhibit 31, p.12):

... A farm supply, sales, storage and service establishment is located on the large, RDT zoned parcel of property located directly across the street. This use was approved in 1999 by Special Exception S-2390 and S-2391. The existing outdoor storage use on the subject property and the special exception use across Ridge Road have co-existed in the area for over a decade without causing any notable impact on the neighborhood and area roads. Both special exception uses sit on large expanses of lands, improved with one and two stories farm buildings and residential dwellings with a notable presence of vegetation and natural terrain that allows them to blend with the rural and agricultural character of the surrounding area.

The Hearing Examiner agrees that the proposed use will not increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter its nature.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Mr. Perrine observes in his land planning report that there is no discharge of waste on-site, in that the portable toilets are emptied and serviced prior to their return to the property, and all repairs are performed within the buildings. Exhibit 44(b), p. 13. Staff adds that the proposed special exception will result in further improving existing landscaping, trees and vegetation, via Forest Conservation requirements and recommended plantings, and will enhance the aesthetic appeal of the neighborhood. Exhibit 31, p. 12. There is no evidence of adverse effects. Thus, the record supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: The evidence supports the conclusion that the proposed special exception would be adequately served by the specified public services and facilities, as discussed in Part II. D. of this report. Technical Staff reports (Exhibit 31, p. 13) that “[t]he proposed use will be adequately served by existing public facilities. It is currently served and will continue to be served by two existing septic systems and wells.” By its nature, the use does not burden public schools. Police and fire protection are presumed adequate by the Growth Policy unless those agencies specify otherwise, which they have not.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision, by the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: This case is in a somewhat unusual middle ground, as explained in Part II. D. of this report. The future trailer garage proposed for the property will require a building permit, and subdivision must occur before such a permit will issue; however, Petitioner has indicated that the garage may not be built in the immediate future, so Subdivision staff determined that a record plat would not be required until such time as a building permit application is filed. Given this posture, Staff assessed the adequacy of public facilities in its report, as did Petitioner’s expert witnesses. The Hearing Examiner recommends that the Board of Appeals make the determination

regarding public facilities based on the evidence presented at this time. The Hearing Examiner has also proposed a condition which specifies that approval of a preliminary plan of subdivision will be a condition of the special exception, if and when Petitioner applies for a building permit and is required to go through subdivision.

Based on the evidence discussed in Part II. D. of this report, the Hearing Examiner finds that there are adequate public facilities serving the site at this time, under the Growth Policy standards in effect when the special exception application was submitted. Both LATR and PAMR have been satisfied. Exhibit 31, pp. 5-6.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Petitioner's traffic engineer, C. Craig Hedberg, testified that the proposed development will not reduce the safety of vehicular or pedestrian traffic (Tr. 132-133), and Technical Staff agreed. Exhibit 31, p. 13. There is no evidence to the contrary, and the Hearing Examiner therefore concludes that the proposed use would have no detrimental effect on the safety of vehicular or pedestrian traffic.

C. Specific Standards

As previously noted, this case represents the first time that this type of special exception (*i.e.*, Outdoor Storage, as permitted in Zoning Ordinance §59- G-2.54.3) has been considered by the Board of Appeals. In fact, the specific use in this case was the motivating factor for creating the special exception, since the use had outgrown its former status as a registered home occupation. Tr. 13-17. This background was discussed in the opinion accompanying Zoning Text Amendment (ZTA) 07-16, which created the special exception (Ordinance No. 16-17, effective May 5, 2008), and a copy of

that ZTA is in the record as Exhibit 9.

The testimony and the exhibits of record, including the Technical Staff reports, provide sufficient evidence that the specific standards required by Section 59-G-2.54.3 are satisfied in this case, as described below.

Sec. 59-G-2.54.3. Storage, outdoor.

A special exception may be granted for an outdoor storage use, including portable toilet storage, subject to the following requirements:

- (a) The minimum area of the property must be 8 acres.*

Conclusion: The subject site contains 8.02 acres and therefore satisfies this requirement.

- (b) The minimum setback from any property line must be 50 feet, except that the minimum setback may be reduced to 20 feet for structures that existed as of January 1, 1995, and if the site abuts land classified in the Rural Cluster Zone that is not developed under the cluster option of the Rural Cluster Zone.*

Conclusion: All buildings on the property meet or exceed the 50-foot requirement, according to Technical Staff (Exhibit 31, p. 14), except for the existing barn building located at the west end of the site, adjacent to the Ovid Hazen Wells Park; it is set back 24.5 feet from the property line, but it was constructed prior to January 1, 1995, is in the RC Zone and is not developed under the cluster option. It therefore satisfies the 20-foot setback provision.

- (c) The property must front on and have direct access to a road built to primary or higher standards.*

Conclusion: The property fronts on Ridge Road (MD 27), which is classified as an arterial, and has direct access to the road via two driveways.

- (d) Screening that prevents visual impact of the use to adjoining and confronting properties must be provided for all parking areas and all exterior areas devoted to on-site operations and the storage of inventory and equipment except where the use abuts or confronts commercially or industrially zoned property.*

Conclusion: As stated by Technical Staff (Exhibit 31, p. 14):

The buildings and other improvements on the property are substantially distanced and separated from the nearest residential uses. Moreover, existing and proposed screening and buffering in the form of landscaping, fences, forest conservation easement and stream buffer, topography and recommended supplemental perimeter planting ensure that the subject property and activities thereon are adequately screened and buffered from adjoining and confronting properties.

Based on the evidence of record, the Hearing Examiner finds that the site is adequately screened to prevent “*visual impact of the use to adjoining and confronting properties.*”

- (e) *The Board may regulate hours of operation, numbers of vehicles and personnel employed, and other on-site operations, including minor repairs to equipment and vehicles used in the operation of the business, so as to prevent adverse impact on adjoining uses.*

Conclusion: The hours of operation, numbers of vehicles and personnel employed, and other on-site operations were discussed in Part II. B. of this report. They are all regulated by conditions recommended in Part V of this report and are set forth in a revised Statement of Operations (Exhibit 50(a)).

- (f) *One and one-half parking spaces must be provided on-site for each 1,000 square feet of total floor area and sufficient area provided for loading and unloading of trucks.*

Conclusion: Parking spaces and loading areas are discussed in Part II.D. of this report. As noted there, at most, 32 spaces are required, and 52 will be provided. Staff also found that a “sufficient area [is] provided for loading and unloading of trucks.” Exhibit 31, p.15.

D. Additional Applicable Standards

59-G § 1.23. General development standards

- (a) ***Development Standards.*** *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The following chart from the Technical Staff Report (Exhibit 31, pp. 7-8), demonstrates compliance with applicable development standards:¹¹

Development Standard	Required	Proposed/Existing
Minimum Lot Area: 59-C-9.42 59-G-2.54.3(a)	5.0 ac 8.0 ac	8.02 ac 8.02 ac
Minimum Lot width: §59-C-9.43 <ul style="list-style-type: none"> at front building line at street line 	300 300	527± 527±
Yard Requirement for a main building: §59-C-9.44 <ul style="list-style-type: none"> From street Side Yards: <ul style="list-style-type: none"> One side Some of both sides Rear 	50 ft 20 ft 40 ft 35 ft	112.1 ft 81.9 ft 422 ft± 290 ft±
Yard Requirement for an accessory Building §59-C-9.45 <ul style="list-style-type: none"> From Street Line From a rear lot line From a side lot line From any lot line under §59-G-2.54.3(b) 	80 ft 10 ft 50 ft 20 ft*	104.1 ft 24.5 ft 60 ft 24.5 ft
Maximum Lot coverage §59-C-9.46	10%	6.8%
Maximum Building Height §59-C-9.47	50	28.8 ft Existing

*§59-G-2.54.3(b) specifies that the minimum setback from any property line must be 50 feet, except that the minimum setback may be reduced to 20 feet for structures that existed as of January 1, 1995, if the site abuts land classified in the Rural Cluster Zone that is not developed under the cluster option of the Rural Cluster Zone. Based on information provided by the Petitioner, the existing barn structure, which is set back 24.5 feet from the rear property line, was placed on the property prior to January 1, 1995. The abutting land is in the RC Zone and was not developed under the cluster option. Therefore, the 20 foot setback applies.

(b) ***Parking requirements.*** *Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: As discussed in Part II. D. of this report, Zoning Ordinance §59-E-3.7 requires two parking spaces for each single-family dwelling unit on the site, and §59-G-2.54.3(f) specifies, “One and one-half parking spaces must be provided on-site for each 1,000

¹¹ After consulting with Technical Staff, a number of typographical errors in this table were corrected by the Hearing Examiner, including citations to the Zoning Ordinance and figures for the existing setbacks.

square feet of total floor area and sufficient area provided for loading and unloading of trucks.” It was calculated that, at most, 32 spaces are required, and 52 will be provided, including 2 handicap spaces, more than meeting the requirements.

- (c) **Minimum frontage.** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

* * *

Conclusion: Not applicable.

- (d) **Forest conservation.** *If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: A preliminary forest conservation plan (PFCP) has been approved by the Planning Board for the site, as discussed in Part II. F. of this report. The special exception proposed by Petitioner will not conflict with the PFCP.

- (e) **Water quality plan.** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: The site is not within a Special Protection Area, so a water quality plan is not required. In any event, DPS has approved a stormwater management concept plan for the site. Exhibit 27(a).

- (f) **Signs.** *The display of a sign must comply with Article 59-F.*

Conclusion: As noted in Part II. B of this report, no signage is proposed for this site.

- (g) **Building compatibility in residential zones.** *Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: Not applicable. The site is in an agricultural zone.

- (h) **Lighting in residential zones.** *All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

- (1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*
- (2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: The limit of 0.1 footcandles at the property line probably does not apply here because the property is not in a residential zone; however, as demonstrated by Petitioner's photometric plan (Exhibit 44(i)), and confirmed by Technical Staff, no direct light will intrude into adjacent residential properties. Staff also notes that "[t]he lighting plan adequately and efficiently provides a safe vehicular and pedestrian environment." Exhibit 31, p. 9.

Based on the testimony and evidence of record, I conclude that the Outdoor Storage use proposed by Petitioner, as conditioned below, meets the specific and general requirements for the special exception, and that the petition and driveway-width waiver request should be granted, subject to the conditions set forth in Part V of this report.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2749, seeking a special exception to allow an Outdoor Storage facility at 23320 and 23330 Ridge Road, in Germantown, Maryland, and a waiver of the driveway-width requirements, be GRANTED, with the following conditions:

1. The Petitioner shall be bound by all of his testimony and exhibits of record, and by the testimony of his witnesses and representations of counsel identified in this report.

2. The number of employees on site is limited to the following:

The Holder of the Special Exception, Vincent Lufsey;
Three Office Employees, two part-time and one full-time;
Three Shop Employees;
Three Delivery Drivers; and
Ten Route Drivers.

3. The following hours of operation are permitted:

Office employees: 8 a.m. – 4 p.m., Monday through Friday

Shop employees: 7 a.m. – 3:30 p.m., Monday through Friday

Delivery Drivers: In: 4 a.m.-6 a.m. Out: 7 a.m. Return: generally by 4 p.m., but allowed up to 6 p.m., Monday through Friday. A delivery may be made outside these hours only in an emergency.

Route Drivers: In: 4 a.m.-6 a.m. Out: 7 a.m. Return: generally by 4 p.m., but allowed up to 6 p.m., Monday through Friday.

From April through October, operations will be permitted on weekends, and the above hours of operations will apply to both Saturday and Sunday, except that rented portable toilets may be returned on Sunday, up until 9:00 p.m.

4. The following equipment may be stored on site:

850 standard, individual, empty porta-toilets;
12 empty mobile restroom trailers;
1 skid loader; and
6 flatbed trailers.

5. The following vehicles may be kept on site:

2 pickup trucks (not to exceed 5 ½ ton); and
12 pump trucks (5 ½ ton cabin with tank mounted on it).

6. The two (2) existing driveways must be widened to a minimum of twelve (12) feet each.
7. All porta-toilets and mobile restroom trailers must be emptied off-site, and there must be no storage or treatment of effluent on site.
8. Petitioner's site plan does not call for any signs, and therefore no signs may be posted on the property.
9. The only new structure proposed for the site is a 54 by 100 foot trailer garage shown on the revised site plan (Exhibit 44(d)). Petitioner must not construct the proposed trailer garage until it obtains a building permit therefor. If and when Petitioner seeks a building permit to construct the proposed trailer garage, a preliminary plan of subdivision will have to be filed. In accordance with Zoning Ordinance §59-G-1.21(a)(9), this special exception is therefore conditioned upon approval of a preliminary plan of subdivision by the Planning Board if and when Petitioner applies for a building permit for construction of the proposed trailer garage. If changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must file a copy of the revised site and related plans with the Board of Appeals.
10. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: April 16, 2010

Respectfully submitted,

Martin L. Grossman
Hearing Examiner